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# Space, scale and Just War: meeting the challenge of humanitarian intervention and trans-national terrorism

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**Abstract.** This article contributes to current debates about Just War by analysing an insufficiently recognised problem with the way Just War theorists have responded to the two principal challenges surrounding the ethics of violence in international relations since the end of the Cold War – humanitarian intervention and the ‘global war on terror’. The problem focuses on strongly embedded assumptions that exist in contemporary Just War debates about the nature and meaning of territory. The article argues that Just War needs to engage more systematically with challenges to dominant ‘Westphalian’ framings of territory, space and scale in order to contribute more effectively to important ethical debates about the use of violence in international relations.

## Introduction

This article contributes to current debates about Just War by analysing an insufficiently recognised problem with the way Just War theorists have responded to the two principal challenges surrounding the ethics of violence in international relations since the end of the Cold War – humanitarian intervention and the ‘global war on terror’. The problem focuses on strongly embedded assumptions that exist in contemporary Just War debates about the nature and meaning of territory. Most importantly for this article, authority is so strongly linked to the territorially bordered and defined state that non-state based political forms, projects and activities are marginalised in analysis and ethically disadvantaged. Much contemporary work pushes this link between legitimate authority, a key *jus ad bellum* principle, and the state, arguing, as we shall see, that it is *only* territorially defined sites of political authority that have the potential to make an ethically positive contribution to meeting the challenges of humanitarian intervention and the ‘war on terror’.<sup>1</sup>

<sup>1</sup> Any article wishing to discuss ‘Just War theory’ or even ‘Just War’ needs to recognise the enormous historical diversity and complexity of debate. It is not possible to speak of a single ‘Just War theory’ or to take any single individual as *the* exemplar of Just War thinking, even within a particular historical period. One of Just War’s great virtues is the plurality of approaches and the scope of resources that it offers for thinking about the problems of ethics and violence. Nevertheless, any article that does not see itself as an exercise in the history of political thought, which is certainly not the intention of this article, must make some choices about simplifications and omissions if it is to be a practicable exercise. Amongst the omissions here is a decision not to discuss classical, medieval or early modern variants on Just War theory, not because they do not contribute to the problem I

Therefore, whilst this is not an article about the theory of state in contemporary, and particularly liberal, Just War theory, it does want to argue that a key component of statehood – territoriality of a particular form – is being used largely without sufficient consideration as to whether or not this is the most effective way of thinking about space and territory as we seek to utilise Just War as an effective framework for ethical consideration of humanitarian intervention and the ‘war on terror’. The conceptualisation of territory in current liberal Just War debates makes an ethical claim out of an empirical point about the non- or differently-territorial concepts of political space that are made by some non-state groups involved in these contemporary ‘just wars’. Because such groups do not ascribe to a statist, or even a liberal statist, agenda in how they understand the location of political authority, ideas of just cause and questions of proportionality, the possibility of their position being compatible with the requirements of a just war is almost automatically rejected.

Whilst we may ethically condemn fundamentalist ‘jihadist’ versions, or perversions, of Islam, that *kind* of project – non-territorial, at least in the conventional sense, and separate from state-based conceptions of citizenship as the ethically ideal relationship between individual and political authority – cannot gain a foothold within Just War’s response to changing patterns of violence. This, the article argues, is because contemporary liberal Just War theory is adopting a concept of territory that assumes that only conventionally bordered states can be just political communities and that only political projects that aim at the creation of such states are ethically defensible. Non-territorial is in danger of coming to mean unethical.

An inadequately critical engagement with the relationship between space, territory, borders and authority are damaging Just War’s ability to think ethically and effectively about contemporary forms of political violence. Just War thinking can meet these challenges, if we adopt a more flexible approach to these issues. In particular, as writers such as Nicholas Rengger have argued, we need to see Just War more as a tradition of ethical thinking about organised violence that establishes the central questions we need to ask and the issues we ought to address, rather than rules for how to act.<sup>2</sup> The close connection between contemporary Just War theory and international law downplays this more flexible and open-minded approach and thus this article is also in part a critique of the style and mode of theory that dominates the current literature, as we shall see below.<sup>3</sup>

The article proceeds in four stages. The first outlines the ‘triumph’ of Just War theory in shaping ethico-political responses to humanitarian intervention and the ‘war on terror’, generating some insightful and highly sophisticated thinking. These two issues are portrayed as ‘challenges’ to Just War, but not in the sense that the

am concerned with, but more for reasons of space and a desire to see how current work in fields like political geography can be helpfully applied. The focus of this article is, as should become obvious, discussions about Just War in the last ten years or so, and within those there is a concentration on what seems to me to be the most important trend within those discussions – a liberal, internationalist focus. Thus when using terms like ‘Just War’ or ‘Just War theory’ the article intends these labels to be read as applying to this work. Occasional clarifying reminders are placed in the text, and I have also tried to indicate where I am departing from this usage.

<sup>2</sup> Nicholas Rengger, ‘On the Just War Tradition in the Twenty-First Century’, *International Affairs*, 78:2 (2002).

<sup>3</sup> Influential in reading Just War into international law, and stressing a normative agenda that sees rules, including formal laws, as important to developing Just War theory is Michael Walzer, *Just and Unjust Wars: a Moral Argument With Historical Illustrations*, 3rd edn (New York: Basic Books, 2000).

tradition is ill-equipped to deal with them, or has had to 'bolt on' ideas from other fields of ethico-political enquiry. Instead, the idea of a challenge is here meant to show how the wider-resources of the tradition can be effectively deployed to address the distinctive features of these forms of violence. Indeed, for some, an activity like humanitarian intervention can easily fall within the rubric of Just War.<sup>4</sup>

The second section looks initially at Martin Shaw's critiques of Just War as an example of someone who has tried to develop a global approach to thinking ethically about violence, via human rights. This serves as an example of how non-statist thinking in this area is available and the section also outlines how ideas of territory, scale and space are influencing other approaches to changing patterns of violence in international relations in fields such as security. This shows how our ethical enquiry is in danger of missing out on a move being made to good effect elsewhere in the subject.

Additionally, the article considers briefly ways in which political geography has looked at Just War in the 'war on terror', identifying key shortcomings in this work as a way to enhancing ethical analysis. The relationship between space, scale and ethics is the principal subject of this third section, using political geography's critique of 'Westphalian' territorial thinking to pick out some of the key challenges that Just War theory faces in addressing humanitarian intervention and the 'war on terror', especially as these are brought together. We shall return here to more detailed consideration of the relationship between territory and authority, and the strongly liberal analytical and normative framework that is deployed in those elements of contemporary Just War work that are the target of this critique. This will hopefully support the claim about the exclusion, almost by definition, of alternative territorial conceptions from inclusion within the remit of Just War theory.

Finally, the article aims to establish an agenda of issues where a less territorially rigid approach within Just War theory can pay dividends in enabling more effective ethical analysis of and engagement with key issues in the contemporary ethics of violence. It does not offer a case-study based approach, for reasons of space, but instead suggests how some of the key questions Just War asks can be asked in a somewhat different manner to that which tends to characterise the framing within contemporary liberal Just War writings. A more open-minded, or at least considered, approach to ethics and territory opens the possibility of both a more effective response to the challenges of intervention and terrorism, and a more dynamic engagement with alternative ethico-political conceptions of the role of territory in international relations. These conceptions are often highlighted as of growing relevance and significance in other areas of the discipline and practice of international politics. The flexibility and inclusiveness of the wider Just War tradition can accommodate these developments to good effect.

### **Just War, humanitarian intervention and the war on terror – a tale of triumph?**

Just War theory successfully shapes, indeed dominates, political-ethical debates about the use of force in international relations. Success may bring certain dangers,

<sup>4</sup> I am grateful to one of the anonymous referees for pointing out the potential confusion in the use of 'challenge' here.

but sharing Walzer's general satisfaction with the way Just War ideas and categories are unavoidable in thinking about and assessing the use of violence is not difficult.<sup>5</sup> Moral scepticism of the sort critically portrayed by Frost or Dower retains little academic credibility in the face of Just War's ubiquity and utility, not to mention its intellectual sophistication.<sup>6</sup> For those committed to the centrality of ethics in the study and practice of international relations, Just War's 'triumph' is heartening.

Two particular instances highlight how Just War shapes and directs debate, even as international relations moves away from classic inter-state war. Since the 1990s, debate over humanitarian intervention has continually referred to the ideas of Just War.<sup>7</sup> An amended Just War framework is central to both landmark policy statements<sup>8</sup> and leading academic analysis of and, in particular, advocacy for, a limited right to humanitarian intervention.<sup>9</sup> Including a right, or possibly even a duty, to defend the victims of grave humanitarian crises within 'just cause' has been one move. Debating the nature of legitimate authority in these circumstances to minimise the opportunity for abuse by the powerful is another. Just cause and legitimate authority are issues the article will return to, as they are important to its case, but the overall agenda extends much further. Wrestling with the challenge of intent in multi-faceted situations where complex actors may intend multiple outcomes and be motivated by a variety of desires is a further issue in this area. Finally, looking at how Just War's rules of combat may have to change in the absence of a 'battlefield', in the conventional sense, is another important element of this process.

The second challenge that, on the triumphalist account, Just War has risen to has been the 'war on terror'. Despite political rhetoric about the absence of rules,<sup>10</sup> or the paradigm-shattering nature of transnational, mass-casualty terrorism, Just War ideas and categories remain central to public political debate. Again, the reaction has been to augment, refine, adjust and revisit the ideas of just cause, legitimate authority, right intention, proportionality, non-combatant immunity and so on. Ideas such as preventive war<sup>11</sup> and the notion of 'illegal combatants' as a new, ethically laden, category into which transnational terrorists fall,<sup>12</sup> have sparked vibrant political and

<sup>5</sup> Michael Walzer, 'The Triumph of Just War Theory (and the Dangers of Success)', *Social Research*, 69:4 (2002).

<sup>6</sup> Mervyn Frost, *Ethics in International Relations* (Cambridge: Cambridge University Press, 1996); Nigel Dower, *World Ethics: The New Agenda* (Edinburgh: Edinburgh University Press, 1998).

<sup>7</sup> For example, Alex J. Bellamy, 'Whither the Responsibility to Protect: Humanitarian Intervention and the 2005 World Summit', *Ethics & International Affairs*, 20:2 (2006).

<sup>8</sup> Tony Blair, 'The Doctrine of International Community', speech to the Economic Club of Chicago 22 April 1999 available at <http://www.number10.gov.uk/output/Page1297.asp>; International Commission on Intervention and State Sovereignty, *Responsibility to Protect* (Ottawa: ICISS, 2001).

<sup>9</sup> For example, Fernando Téson, *Humanitarian Intervention*, 3rd edn (Dobbs Ferry, NY: Transnational, 2005); Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).

<sup>10</sup> Andrew Hurrell, '“There Are No Rules” (George W. Bush): International Order After September 11th', *International Relations*, 16:2 (2002).

<sup>11</sup> For example, National Security Council, *National Security Strategy of the United States of America* (2002) available at <http://www.whitehouse.gov/nsc/ns.pdf>; Allen Buchanan and Robert O. Keohane, 'The Preventive Use of Force: a Cosmopolitan Institutional Perspective', *Ethics & International Affairs*, 18:1 (2004); Jean Bethke Elshtain, *Just War Against Terror: the Burden of American Power in a Violent World* (New York: Basic Books, 2004); Whitley Kaufman, 'What's Wrong With Preventive War? The Moral and Legal Basis for the Preventive Use of Force', *Ethics & International Affairs*, 19:3 (2005).

<sup>12</sup> For example, George H. Aldrich, 'The Taliban, al Qaeda and the Determination of Illegal Combatants', *American Journal of International Law*, 96:4 (2002).

academic debates. Some revisit old territory, cast with fresh light from the burning towers of the World Trade Centre, such as the permissibility of torturing suspects for information about planned attacks.<sup>13</sup> Others are substantively new, such as Tésón's efforts to connect humanitarian intervention to regime change and the rights of liberal states, especially the US, to replace illiberal tyranny in the name of both the victims of such tyrants and the wider call of security for the ethically superior liberal parts of the world.<sup>14</sup>

Indeed, Tésón's argument symbolises the triumph of Just War theory, by bringing together into one revised doctrine the two post-Cold War challenges to Just War theory's most familiar terrain of inter-state war. This is not without problems or critics, but it shows that Just War theory remains an effective ethical framework for addressing pressing contemporary issues of violence in international relations.<sup>15</sup> This move may extend further, as Tésón's argument shares features of Feinstein and Slaughter's analysis connecting those advocating limited rights of humanitarian intervention with the need to combat transnational terrorism and the proliferation of WMD.<sup>16</sup> Feinstein and Slaughter also deploy notions of just cause, proportionality, legitimate authority, right intention and last resort from Just War's lexicon.<sup>17</sup>

Buchanan and Keohane's influential defence of preventive war also utilises Just War criteria and extends this line of ethical reasoning. They assume an unproblematic conflation of, firstly, cosmopolitan ethical concern with human rights and, secondly, a straightforward statement that cosmopolitanism of this stripe is 'central to the just war tradition and the current international legal order's allowing human rights to limit state sovereignty'.<sup>18</sup> Historians of the Just War tradition would find such claims surprising, as would those who see rules on violence, such as those of the Just War, as principally being about protecting the rights of states.<sup>19</sup> It also typifies concern about an overly close relationship between Just War theory and current legal doctrine. That Buchanan and Keohane construct a defence of preventive war in the face of non-imminent threats of mass-casualty terrorist attack further emphasises the highly distinctive blending of human rights, just war, humanitarian intervention and anti-terrorist actions in recent debate.<sup>20</sup>

The intellectual sophistication of this debate is impressive and intimidating. The weight of ages bears down and heavyweights of the philosophical, theological and political theoretical traditions are cited to grant vicarious authority to contemporary debate. Some see this venerability as providing rich resources for addressing

<sup>13</sup> For example, Alan M. Dershowitz, 'The Case for Torture Warrants', 2002, available at: <http://www.law.harvard.edu/faculty/dershowitz/Articles/torturewarrants.html>; Charles Krauthammer, 'The Truth About Torture: It's Time to be Honest About Doing Terrible Things', *The Weekly Standard*, 11:12 (2005).

<sup>14</sup> Fernando Tésón, 'Ending Tyranny in Iraq', *Ethics & International Affairs*, 19:2 (2005).

<sup>15</sup> Terry Nardin, 'Humanitarian Imperialism', *ibid.*

<sup>16</sup> Lee Feinstein and Anne-Marie Slaughter, 'A Duty to Prevent', *Foreign Affairs*, 83:1 (2004).

<sup>17</sup> Feinstein and Slaughter, 'Duty to Prevent', pp. 148–9.

<sup>18</sup> Buchanan and Keohane, 'Preventive Use of Force', pp. 1, 4.

<sup>19</sup> For example, Hedley Bull, *The Anarchical Society: a Study of Order in World Politics* (London: Macmillan, 1977); Robert H. Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000); James Mayall, *World Politics: Progress and Its Limits* (Cambridge: Polity Press, 2000). However, we perhaps ought to allow Buchanan and Keohane the same licence as I request in note 1 – when we use the term 'Just War theory' we aren't necessarily claiming to represent the entire canon of work over the last 1,500 years or more.

<sup>20</sup> Buchanan and Keohane, 'Preventive Use of Force', pp. 5–10. See also Steven Lee, 'A Moral Critique of the Cosmopolitan Institutional Proposal', *Ethics & International Affairs*, 18:1 (2005).



contemporary issues. James Turner Johnson is the pre-eminent example of this approach, his 'Morality and Contemporary Warfare' draws extensively on the tradition to encompass contemporary challenges, principally of humanitarian intervention, but also applicable to the 'war on terror'.<sup>21</sup>

Others develop Walzer's more 'applied' approach, although he also lays some claim to the theological and philosophical strands of the tradition. Just War's key virtue is the ability to illuminate historical 'illustrations' and to learn from, adapt to and engage with historical trends in the material capabilities of violence. Just War is a living tradition, benefiting from not being inextricably tied to foundational theological or philosophical claims about the nature of human beings, law or the divinely ordained order of things. Secularised, goes the argument, Just War is stronger, although we should remember that even shallow excavation will '... find a theological claim lurking underneath.'<sup>22</sup>

Secularisation stems partly from inserting Just War thinking into the 'Westphalian' world, as Elshtain terms it, and the logics of an international society, or societies, that consequently arise.<sup>23</sup> This is an important move for the form of Just War theory that this article focuses upon, and is thus a line that receives attention later in the article. Pre-Westphalian and more theological strands endure into the modern period, though, and debates about issues such as legitimate authority continue to wrestle over the mantle of, for example, Saint Augustine.<sup>24</sup> Also important to secularisation is Just War's role in shaping international law and the development of the international legal tradition, particularly its positivist incarnations where rational interest underpins jurisprudential reasoning and the nature and purpose of public law.<sup>25</sup> The idea of legitimacy as a politico-legal construct, associated most closely with Thomas Franck; the decline of strict legal positivism; and the reconnection of legal manifestations of Just War thinking with wider normative theoretical debate, demonstrate the complexity, sophistication, rigour and sheer volume of material upon which contemporary Just War theorists can draw.<sup>26</sup>

A final example of the sophistication of the debate is the development of *jus post bellum* alongside traditional *jus ad bellum* and *jus in bello* categories. Johnson is amongst those developing this category, although he does not use the label, reiterating that those working principally within the classical resources of the tradition remain innovative and responsive to contemporary challenges.<sup>27</sup> Evans, Rigby and Hayden develop explicit discussions of the *jus post bellum*.<sup>28</sup> Earlier

<sup>21</sup> James Turner Johnson, *Morality and Contemporary Warfare* (Cambridge, MA: Yale University Press, 1999).

<sup>22</sup> Jean Bethke Elshtain, 'International Justice as Equal Regard and the Use of Force', *Ethics & International Affairs*, 17:2 (2003), p. 69.

<sup>23</sup> Elshtain, 'International Justice', p. 69. On international society, see Bull, *Anarchical Society* and on international societies, see Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002).

<sup>24</sup> I am grateful to an anonymous referee for suggesting the need to emphasise this point.

<sup>25</sup> Walzer, *Just and Unjust Wars*, pp. 58–63.

<sup>26</sup> Thomas M. Franck, *The Power of Legitimacy Among Nations* (Oxford: Oxford University Press, 1990).

<sup>27</sup> Johnson, *Morality and Contemporary Warfare*, pp. 191–218.

<sup>28</sup> Mark Evans, 'Moral Theory and the Idea of a Just War', in Mark Evans (ed.), *Just War Theory: A Reappraisal* (Edinburgh: Edinburgh University Press, 2005), pp. 19–20; Andrew Rigby, 'Forgiveness and Reconciliation in *Jus Post Bellum*', in Evans (ed.), *Just War Theory*; Patrick Hayden, 'Security Beyond the State: Cosmopolitanism, Peace and the Role of Just War Theory', in Evans (ed.), *Just War Theory*.

discussions of humanitarian intervention implicitly require this category because they emphasise long-term commitment to prevent humanitarian disasters necessitating intervention recurring.<sup>29</sup>

The wars in Afghanistan and Iraq bring home *jus post bellum*'s necessity in the 'war on terror', demonstrating the enormous difficulty of establishing such justice, especially when 'justice' is deeply indebted to liberalism, yet local circumstances are not hospitable to that doctrine. In some ways, this, too, recaptures the richness of the Just War tradition. Restoration of the *status quo ante bellum* as being about all that needed to be said on this subject, and thus covered by the right intention principle of the *jus ad bellum*, stands in contrast to the idea of punishment that was prominent in the classic, Christian texts on Just War.<sup>30</sup> It is notable, though, that some analysts see the war on terror as akin to punishment, which the medieval tradition included as an element of just cause.<sup>31</sup> Contemporary *jus post bellum* ideas recapture some of that spirit, for example in seeing as essential arraigning those responsible for gross human rights abuses before appropriate courts. I will not discuss the restorative versus retributive justice debate in any detail, but, again, this sophisticated discussion highlights how serious consideration of the nature and content of *jus post bellum* is underway.<sup>32</sup> We also find here a hint of the statist territorialisation embedded even in these innovative arguments, via debates over whether the process should take place within the state concerned and under the auspices of its own authoritative institutions, or whether international tribunals or courts, constituted through treaty or UN resolution, offer the best way forward. Either way, the right to authorise, frame and conduct the pursuit of *jus post bellum* is state-based.

Particularly pertinent to this article is the way *jus post bellum* is linked to political transformation in post conflict societies that embeds liberal democratic values, concepts, institutions and practices. This applies whether we are dealing with the aftermath of humanitarian intervention or action pursuant to the 'war on terror'. In its strongest statements *jus post bellum* is defined by the creation of liberal democratic states.<sup>33</sup> However, having sketched Just War's response to the challenges of humanitarian intervention and the 'war on terror', largely successful in the eyes of those canvassed above, it is time to look at critique, especially that laying foundations for arguments I wish to make in response to the 'triumph' of Just War theory.

### Challenging Just War theory

Most interesting of the challenges to these moves in Just War is the use of human rights because of the way they promise a global, deterritorialised perspective able to

<sup>29</sup> Wheeler, *Saving Strangers*; ICISS, *Responsibility to Protect*, pp. 39–46.

<sup>30</sup> I am indebted to Anthony F. Lang, Jr. for this point. See also Gregory Reichberg, Henrik Syse and Endre Begby (eds), *The Ethics of War: Classic and Contemporary Readings* (Oxford: Blackwell, 2006), pp. 60–199.

<sup>31</sup> Paul Gilbert, *New Terror, New Wars* (Edinburgh: Edinburgh University Press, 2003), pp. 100–1.

<sup>32</sup> Gilbert, *New Terror*, pp. 103–51; Rigby, 'Forgiveness and Reconciliation'; Andrew Schaap, 'Forgiveness, Reconciliation and Transitional Justice', in Anthony F. Lang, Jr. and John Williams (eds), *Hannah Arendt and International Relations: Readings Across the Lines* (New York: Palgrave, 2005).

<sup>33</sup> For example, Elshtain, 'International Justice'; Elshtain, *Just War Against Terror*; Tesson, 'Ending Tyranny'.



challenge ways in which we think about the political authority of the state and the standards and measures against which we judge questions such as just cause and proportionality. They ought, on the face of it, to be very helpful in pushing forwards a critical agenda on the concept of territory in most contemporary liberal Just War writing and the implications that flow from an overly static and 'Westphalian' view. In particular, the emphasis on human rights has led to debates over whether human rights are compatible with, and even enhanced by, a commitment to Just War principles and practices. Some have seen little difficulty with this,<sup>34</sup> whilst others have debated whether human rights are a useful analogy for Just War principles: for example is the state's right to self-defence analogous to that of individuals, or is it instead the cumulative result of the individual rights of the state's citizens?<sup>35</sup>

Not all are satisfied with these moves. Martin Shaw, for example, places human rights centre-stage in his critique of 'risk transfer war', which characterises, he argues, the ways leading Western military powers, most importantly the United States, have pursued military operations in the last decade.<sup>36</sup> This is the latest incarnation of 'degenerate war' – the process by which, throughout the twentieth century, war increasingly focused on killing civilians and destroying societies.<sup>37</sup> This process was driven by the leading powers throughout this time, and cannot be dismissed as a consequence of 'degenerate' regimes, such as Nazi Germany. Neither is it limited to the phenomena of 'new wars',<sup>38</sup> in which the collapse of legitimate political authority helps bring about brutal internecine conflicts driven by some combination of ideological, religious or nationalist prejudice, and economic enrichment. For Shaw, the wars fought in Kosovo, Afghanistan and Iraq are from the same stable as those in Democratic Republic of Congo, Chechnya or Liberia.

The idea of Just War faces a fundamental crisis in its ability to set rules, principles and limits on this degeneracy and is becoming a threat to the ethical imperative of protecting human rights, because what characterises this commonality is the abuse of human rights. In the latter conflicts this is perhaps more obvious, because pillage, rape, mutilation, massacre and torture are routinely deployed by those ostensibly part of armed organisations. In the case of Kosovo, Afghanistan and Iraq, however, degeneracy is less immediately apparent. Abuses such as those at Abu Ghraib, Camp Breadbasket, CIA 'black prisons' and Guantanamo Bay receive widespread attention, but Shaw's argument is different. His claim is that contemporary Western warfare abuses human rights by transferring risk from Western combatants to the non-combatants of the state where the conflict is taking place, even when the state apparatus may not be the target of military action.

Although precision guided munitions enable Western militaries to avoid the most blatant instances of degeneracy, such as the area bombing of cities, the pattern of

<sup>34</sup> Buchanan and Keohane, 'Preventive Use of Force'; Tesson, 'Ending Tyranny'.

<sup>35</sup> For example, Gilbert, *New Terror*, pp. 24–46; Jeff McMahan, 'War as Self-Defense', *Ethics & International Affairs*, 18:1 (2004); David Rodin, 'War and Self-Defense', *Ethics & International Affairs*, 18:1 (2004); Cheney C. Ryan, 'Self-Defense and the Obligations to Kill and Die', *Ethics & International Affairs*, 18:1 (2004).

<sup>36</sup> Martin Shaw, *The New Western Way of War: Risk Transfer War and Its Crisis in Iraq* (Cambridge: Polity Press, 2005).

<sup>37</sup> Martin Shaw, *War and Genocide: Organized Killing in Modern Society* (Cambridge: Polity Press, 2003).

<sup>38</sup> Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Cambridge: Polity Press, 1999).

transferring risk to civilians has in fact accelerated. Whilst casualty figures may be lower overall, the proportion of enemy non-combatants being killed or injured has risen, and risen dramatically. In the war over Kosovo, famously, NATO forces suffered no combat deaths. In the war to overthrow the Taliban, the only US combat death was of a CIA agent caught up in a riot of prisoners of war. The prison was subsequently levelled and the vast majority of the prisoners killed, despite their non-combatant status in Just War terms.<sup>39</sup>

Shaw's critique is powerful and thought-provoking. He challenges arguments that precision guided munitions restore a degree of discrimination between combatant and non-combatant that the industrialised warfare of the twentieth century had seemingly destroyed, pointing to the balance of risk in the context of human rights.<sup>40</sup> Shaw argues that rights of Western combatants are almost automatically placed ahead of those of enemy non-combatants. Saving soldier's lives at the cost of civilians is a part of the degeneracy of warfare, and even if the scale of civilian losses may be lower in terms of outright numbers they now make up a larger proportion of those killed and injured, with Western combatants becoming less likely to be casualties.<sup>41</sup>

Insurgency in Iraq and Afghanistan may restore the vulnerability of Western troops to an extent, but even here the number of civilians being killed dwarfs the number of troops. Shaw thus argues that, from a human rights perspective, Just War has failed to rein in warfare's degenerate tendencies. Just War thinking has lost touch with the human rights tradition that alone can ground an ethical framework for thinking about the systematic and organised use of violence. We cannot, in an era of global human rights, ethically privilege 'our' state and 'our' citizens in order to place the lives of 'our' soldiers ahead of 'their' civilians. The globalised character of these conflicts means the global standards the leading powers claim to be upholding must be and are held against them by global media and civil society organisations. The authority and accountability for war are no longer, therefore, state-based. Shaw's analysis of the failure of Just War theory to escape the 'sorry comforter' tag leads not to pacifism, but to an appeal to a different scale – the global – and a deterritorialised account of the ethics of war. This, therefore, looks very promising in our search for a way to unpick some of the problems with contemporary Just War debates about these conflicts.

Shaw's critique plugs into a wider trend in thinking about war appealing to different notions of the role, nature and meaning of territory associated with the emergence of non-state based conceptions of space and scale.<sup>42</sup> Globalisation is a part of this with obvious relevance for current Just War debates about terrorism. The idea of a 'global war on terror' and the ways leaders like Tony Blair located both humanitarian intervention and anti-terrorism within a context of globalisation point to these connections.<sup>43</sup> The global scope of human rights claims underpinning humanitarian intervention (and Shaw's critique of Just War) and the transnational characterisation of al Qaeda and other terrorist organisations can be seen in the same

<sup>39</sup> Shaw, *War and Genocide*, pp. 126–7, 238–40; Gilbert, *New Terror*, p. 101.

<sup>40</sup> For example, Elshtain, 'International Justice', p. 69, n. 6.

<sup>41</sup> Shaw, *War and Genocide*, pp. 238–40; Shaw, *New Western Way*.

<sup>42</sup> For example, John Agnew, *Geopolitics: Re-Visioning World Politics* (London: Routledge, 2003); Jan Aart Scholte, *Globalization: a Critical Introduction*, 2nd edn (Basingstoke: Palgrave, 2005).

<sup>43</sup> John Williams with Tim Roach, 'Security, Territorial Borders and British Iraq Policy: Buying a Blair Way to Heaven?', *Geopolitics*, 11:1 (2006).

light. The notion of 'new wars' raises questions about the understanding of territory that participants evoke alongside concern at their brutality. Sometimes, most notably in former Yugoslavia, conflict is about statehood and a national homeland, but even there, and more so in places like the Democratic Republic of Congo, controlling territory is not about seeking a homeland or commanding authority in the name of a political programme, it is about economic activity – 'banditstans'. Political fears about 'failed states' have refocused from humanitarian catastrophe following the disintegration of political authority, to 'failed states' as havens for transnational terrorists, with Somalia in 1992 and now illustrating both points.

However, a lot of the contemporary Just War debate refers explicitly to 'Westphalian' states, especially in relation to key debates about cause, authority and proportionality.<sup>44</sup> When the nomenclature is absent, the understanding of territory typically fits this 'Westphalian' pattern and the perspective of the global, where Shaw wishes to lead us, is strongly resisted. Here, to quote Elshtain, 'The presumption of state sovereignty held that the state alone was the arbiter of what counted as justice, law and freedom within its bounded territory.'<sup>45</sup> Whilst, as we have seen, Just War theorists like Elshtain advocate limits to permissible interpretations of justice, law and freedom, that institutionalisation and operationalisation of these crucial values revolves around the state remains almost unchallenged in the contemporary liberal Just War literature this article surveys. So, for example, for Buchanan and Keohane it is the United Nations, backed-up by a coalition of democratic states, which will hold accountable states (and it is states alone) that carry out preventive military operations.<sup>46</sup> For Téson, Just War will reform tyrannical states, making them partners in protecting and promoting human rights understood, as Elshtain argues, to require a territorialised political authority claiming sovereignty if they are to be practically meaningful.<sup>47</sup>

However, this conception of territory is contestable and the idea of a stable constellation of identity, values, authority, security and power defining the state since Westphalia is a myth, although a widespread and deeply-rooted one. It is relatively novel – potentially as recent an invention as the late 1940s.<sup>48</sup> Political geographers, particularly those pursuing critical geopolitics, have explored how understandings of the nature and role of territory are connected to power political practices to show that territory and territoriality are highly political and dynamic phenomena.<sup>49</sup> The relationship between territory, society and the state is complex and thus the relationship between territory and the values of such societies, including notions of justice and freedom, is far from straightforward.<sup>50</sup> Our spatial ideas about scale, territory and borders play significant roles in what we value and how we value it, and thus in our ethical perspective on violence legitimised in the name of justice. Bordering sovereignty with precise, razor-sharp lines on the map is one example of

<sup>44</sup> For example, Gilbert, *New Terror*, pp. 103–4; Elshtain, 'International Justice', p. 65.

<sup>45</sup> Elshtain, 'International Justice', p. 65.

<sup>46</sup> Buchanan and Keohane, 'Preventive Force'.

<sup>47</sup> Téson, 'Ending Tyranny'; Elshtain, 'International Justice'.

<sup>48</sup> Peter Stirk, 'The Origins of the Westphalian Myth', unpublished ms.

<sup>49</sup> For example, John Agnew and Stuart Corbridge, *Mastering Space: Hegemony, Territory and International Political Economy* (London: Routledge, 1995); Gearoid Ó Thuathail, *Critical Geopolitics: The Politics of Writing Global Space* (London: Routledge, 1996).

<sup>50</sup> Jouni Hakli, 'In the Territory of Knowledge: State-Centred Discourses and the Construction of Society', *Progress in Human Geography*, 25:3 (2001).

how the meaning and significance of certain pieces of territory change. Border zones as places where security and identity are threatened, where wars are most likely to occur and where sovereign authority is most visible through the policing of entry and exit from the state, indicates this geographical distinctiveness.<sup>51</sup>

Experiences, such as that of the EU, show how the location, significance and character of borders can change, with the development of the Schengen agreement pushing classic 'sovereign' functions of controlling ingress and egress away from sovereign states like Belgium or Holland, which lack non-Schengen land borders, and towards the EU's periphery and the idea of 'fortress Europe' being in the hands of the Slovaks, Poles, Slovenians, Greeks, Spaniards and others. This 'de-naturalizes' European states' borders, reinforcing the need to think about activity like security, immigration and belonging at multiple scales and in spaces distinct from the 'Westphalian' state.<sup>52</sup> Abandoning the 'state' for the 'global' as we search for a different spatial and scalar analysis on Just War therefore seems implausible. We have to look for resources within Just War theory and its present statist formulation to augment these critiques, and those coming from elsewhere in relevant areas of international relations.

Security analysis within international relations has also changed scale, moving away from the state and placing regions at the centre of a diversified security agenda where war and military action play an important but not necessarily dominant part.<sup>53</sup> Structural theories of state behaviour are also recognising the growing significance of regions. Buzan's reappraisal of the English school, systematising its theory, renews the understanding of structure in English school theory and adds a regional dimension to its scales of analysis.<sup>54</sup> Similarly, his account of polarity reintroduces a category of 'great power' to augment 'superpower' and 'other', emphasising the significance of regions and the regional scope of states' power projection capabilities and political ambitions.<sup>55</sup>

This trend away from statist analyses, alongside Shaw's global re-framing of the ethics of war, highlights that responses to humanitarian intervention and transnational terrorism could connect to ideas of changing scale, differing conceptions of political space and awareness of diverse understandings of territory. Contemporary liberal Just War theory, though, is heading in the opposite direction. The state not only retains its central position, but this is being reinforced, at some cost to Just War's ability to engage effectively with contemporary warfare.

From the political geography side of this picture, there has been some work on Just War and political space. This very strongly emphasises the idea that Just War

<sup>51</sup> For example, Peter Andreas, 'Redrawing the Line: Borders and Security in the Twenty-First Century', *International Security*, 28:2 (2003); Hastings Donnan and Thomas Wilson, *Borders: Frontiers of Identity, Nation and State* (Oxford: Berg, 1999); David Newman and Anssi Paasi, 'Fences and Neighbours in the Post-Modern World: Boundary Narratives in Political Geography', *Progress in Human Geography*, 22:2 (1998); John Williams, *Ethics and Territorial Borders: Drawing Lines in the Shifting Sands* (Basingstoke: Palgrave, 2006).

<sup>52</sup> William Walters, 'De-Naturalising the Border: The Politics of Schengenland', *Environment and Planning D: Society and Space*, 20:5 (2002).

<sup>53</sup> Barry Buzan and Ole Wæver, *Regions and Powers: The Structure of International Security* (Cambridge: Cambridge University Press, 2003).

<sup>54</sup> Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalisation* (Cambridge: Cambridge University Press, 2005).

<sup>55</sup> Barry Buzan, *The United States and the Great Powers: World Politics in the Twenty-First Century* (Cambridge: Polity Press, 2005).

is only applicable to inter-state warfare and is an extension of the dominant, 'Westphalian' territorial conception.<sup>56</sup> As such, it reinforces the need for critique and highlights just how political ideas of territory are, and how important a role these established notions play in thinking about war and violence. More generally, though, this work sees little hope in Just War theory as a framework or resource for engaging effectively with the challenges of humanitarian intervention and the war on terror. This is because it sees Just War theory as a discursive manifestation of hegemonic power in international relations, the 'prime morality' to go alongside the 'prime modernity'<sup>57</sup> through which the United States has been able to establish and impose wide-ranging political, economic, social and cultural expectations, norms and rules that grant the US a privileged position and establish its authority to break the rules that it sets for others. The contradictions between the ideas of moral equality between states via sovereign equality, which this work stresses as the central element of Just War, and US extra-territorial action, are finessed through a series of ethical claims and moves that are testimony to the hegemonic power's ability to manipulate, alter and subjugate ethical claims, ideas and discourse to its own ends.<sup>58</sup>

This account of Just War is very thin, being heavily reliant on Walzer's *Just and Unjust Wars* as being the definitive statement of Just War theory and taking some remarkable liberties with the tradition's dynamic and conflictual historical development.<sup>59</sup> This is not the place to engage in detailed critique of the shortcomings of these accounts, though. The main point to make is that, so far, political geographers have seen Just War theory as simply an extension of the struggles for and attainment of hegemony. They deny its ability, and, indeed, presumably the ability of any moral and ethical analysis of political behaviour, to be more than an epiphenomenon of power. This is perhaps symbolised by the quote to be found repeated time and again and which seems, to these authors, to sum up Just War in their eyes: 'A war called unjust is a war disliked'.<sup>60</sup> Just War is thus about presentation and public relations – indeed it cannot be anything more – and therefore thinking about how humanitarian intervention and the 'war on terror' present serious and ethically significant challenges to our understanding of the nature and significance of territory cannot be advanced by calling on the tradition of Just War. Indeed, on the logic of

<sup>56</sup> Colin Flint, 'Dynamic Metageographies of Terrorism: the Spatial Challenge of Religious Terrorism and the "War on Terrorism"', in Colin Flint (ed.), *The Geography of War and Peace: from Death Camps to Diplomats* (Oxford: Oxford University Press, 2005), pp. 210–11.

<sup>57</sup> Colin Flint and Ghazi-Walid Falah, 'How the United States Justified Its War on Terrorism: Prime Morality and the Construction of a "Just War"', *Third World Quarterly*, 25:8 (2004), especially pp. 1387–9.

<sup>58</sup> Flint, 'Dynamic Metageographies', pp. 210–11; Flint and Falah, 'How the United States Justified Its War on Terrorism', pp. 1379–89; Ghazi-Walid Falah, Colin Flint and Virgine Mamadouh, 'Just War and Extraterritoriality: The Popular Geopolitics of the United States' War on Iraq as Reflected in the Newspapers of the Arab World', *Annals of the Association of American Geographers*, 96:1 (2006), pp. 142–6.

<sup>59</sup> For example, Falah, Flint and Mamadouh, 'Just War and Extraterritoriality', p. 144.

<sup>60</sup> The quote is taken from Walzer, *Just and Unjust Wars*, p. 12. It is repeated in Flint, 'Dynamic Metageographies', p. 210; Flint and Falah, 'How the United States Justified Its War on Terrorism', p. 1395; Falah, Flint and Mamadouh, 'Just War and Extraterritoriality', p. 143, and Ghazi-Walid Falah, 'Peace, Deception and Justification for Territorial Claims: the Case of Israel', in Flint (ed.), *Geography of War and Peace*, p. 297. It is interesting that all these repetitions appear in either the introductory or concluding summaries of the significance of Just War and the lessons for political geography. It is also noteworthy that Walzer, in fact, uses it in paraphrase of Hobbes and, in the same sentence, explains why he finds such a stance to be fundamentally flawed. None of the citations acknowledge this.

seeing ethical debate and discourse as manifestations of power, we have no resources for engaging in such analysis. Clearly, this is a conclusion which this article cannot accept. It is time, then, to move on and see where the principal areas for new thinking lie and why it is that embedded notions of territory are generating some specific problems for Just War theorists' efforts to engage with humanitarian intervention and the 'war on terror'.

### Space, scale, the state and ethics

That the state has been at the centre of Just War thinking for the last two hundred years at least is surely uncontroversial and current leading Just War theorists are embedding this centrality. What is striking is that the move is a self-consciously ethical one – the state, so long the subject of ethical suspicion and critique – is central to ethical responses to humanitarian abuse and terrorist violence. More specifically, the state is both the vehicle and the source of authority for the just war against these ills and the basis for a lasting solution to them, especially when humanitarian crises and terrorism meld together.

Most striking is how Elshtain uses Just War arguments connecting military intervention to the creation, or recreation, of 'ordinary civic peace' as the *sine qua non* for ethical life.<sup>61</sup> This civic peace not only requires effective state institutions, but demands these take certain forms, are limited in power, are held accountable in certain ways and are animated by a particular ethos of service to those over whom they exercise limited authority. Elshtain sees just wars against those presiding over, whether through intention or neglect, humanitarian catastrophes or terrorist activity as being about bringing the victims of such abuse within the embrace of a liberal democratic state.

Utilising the contingency of sovereignty that humanitarian intervention placed on the agenda, Elshtain, in common with Tésou, extends this contingency to legitimise measures against transnational terrorist organisations, principally al Qaeda and similar groups.<sup>62</sup> The threat they represent to the creation of civic peace in places such as Afghanistan and Iraq, and their potential to disrupt the civic peace of the US and other established Western democracies, generates just cause, and also compromises, if not removes, the sovereignty of those states harbouring or aiding them.

The nature of the state's authority becomes an object of debate about just cause and right intention as well as legitimate authority within the *jus ad bellum* side of the Just War tradition. The authority of states maintaining ordinary civic peace is superior to those that do not and to any non-state based political form. The legitimate state is one that protects and promotes the rights and interests of its citizens, starting with their entitlement to live securely within a territorially bounded zone of ordinary civic peace. Where states fail or are unwilling to deliver this, or are involved with organisations committed to the destruction of civic peace, then, as with murderous regimes overseeing humanitarian catastrophe, they lose any serious claim

<sup>61</sup> Elshtain, 'International Justice'; Elshtain, *Just War Against Terror*; Jean Bethke Elshtain, 'Against the New Utopianism', *Ethics & International Affairs*, 19:2 (2005).

<sup>62</sup> Elshtain, 'International Justice'; Elshtain, *Just War Against Terror*; Tésou, 'Ending Tyranny'.



to legitimacy. They lack legitimate authority and their intention in resisting Western power is ethically reprehensible because it denies humans their right to live within a zone of ordinary civic peace. For Tésón, this grounds the ethical superiority of the intentions and authority of liberal democratic states: 'the fact that the West has disproportionate influence on the [United Nations] Security Council is one of its *good* features. . . . It is unacceptable that the decision whether to free people from tyranny, or to veto any such decision, be left to illegitimate regimes.'<sup>63</sup>

This ordinary civic peace is necessarily territorialised within the sovereign state. Elshtain is clear about this: 'Justice demands accountability and there is no political accountability where there is no structure of power and law. . . . Absent such a structure, culminating in some form of political sovereignty [and] the likelihood of what we now routinely call "humanitarian catastrophes" is magnified manyfold.'<sup>64</sup> Her argument throughout *Just War Against Terror* reiterates this – belief in irreducible and inalienable notions of human dignity means we *have* to create and preserve zones of ordinary civic peace. In the absence of plausible or desirable global arrangements for securing this goal, the sovereign state is the best available means. The state also enables us to connect ordinary civic peace to shared community values, traditions and history, reinforcing the security of civic peace. However, it follows that ideas about community that can not or will not be bordered in this way are rendered ethically inferior.

Relations between states cannot be separated from this ethical imperative. International relations does not operate under different rules and according to a different ethical logic. Coexistence among states that secure the ordinary civic peace is unproblematic. But in relations with states and non-state organisations that either cannot fulfil this ethical imperative or reject it in favour of religious or ideological zealotry, coercion is justified and necessary. Retreat from the world by 'good' states is self-defeating, because it allows their enemies the opportunity to prepare attacks, and abrogates their obligation to liberate those blighted by terrorism and tyranny. Accepting the responsibility brought by authority means engaging boldly with the world and those who suffer the effects of illegitimate states. In a typically bravura finale, Elshtain concludes that through her approach, 'The brutal Melian rule is hereby reversed: The strong do what they must in order that the weak not suffer what they too often will.'<sup>65</sup>

Privileging the state as the solution to human rights abuses is, patently, problematic. It is too easy, though, to see this as a statist hangover from the time when *Just War* principally, if not solely, addressed inter-state conflict. It is true, though, that the *Just War* principles with which we are so familiar are most easily applicable in that context or, with some adjustment, to civil wars where control of the state is the object of all parties. As this article has already argued, though, that statist perspective on the space and scale of violence and security is widely challenged. Equally, notions of international justice beyond the issue of violence, most obviously distributive justice, routinely extend beyond the state to the global level.<sup>66</sup> These wider realms of justice are recognised, indeed Elshtain's notion of equal regard demands such recognition

<sup>63</sup> Tésón, 'Ending Tyranny', p. 17.

<sup>64</sup> Elshtain, 'International Justice', p. 63.

<sup>65</sup> *Ibid.*, p. 75.

<sup>66</sup> For example, Charles R. Beitz, *International Relations and Political Theory* (Princeton, NJ: Princeton University Press, 1979).

worked out in terms of concentric circles of obligation.<sup>67</sup> However, when it comes to political authority able to grant justice, and the relationship between individuals and authority, we are thrown, inextricably it seems, into the clutches of the state and classic liberal notions of citizenship.

This, in part, recognises that the US government in particular has recast transnational terrorist threats within a statist discourse.<sup>68</sup> Labelling states members of an 'axis of evil', ascribing responsibility for combating terrorism to governments – it was governments who were to decide whether they were either 'with us [the United States], or with the terrorists'<sup>69</sup> – and seeing interdicting terrorist ambitions to acquire WMD as best achieved by preventing states acquiring such technologies is telling of a stubbornly 'Westphalian' world view. But more to the point here is that academic debate about Just War, humanitarian intervention and terrorism, especially when the latter two are connected, quickly does the same thing. The targets of a Just War, though, may not share this geographical perspective. Here the political geographers are clearly right – there is an effort to corral debate within a specific territorial perspective and that this both serves the interests of the US as the leading power – it enables the application of hard military power to the problem of transnational terrorism – but it also must be subject to critical assessment.<sup>70</sup> This not only has to look at whether the solutions to the problems that arise from this perspective are effective in addressing transnational terrorism. It must also look at the normative implications for the rules by which we constitute and govern such activity, and how this fits in with or disrupts the ethical schema that grants coherence and direction to those operational norms. That should not be done in a one-eyed fashion, whereby political programmes and concepts of authority, responsibility and justice that are incompatible with a specific territorial perspective are automatically marginalised.

The distinctiveness of the political programme that motivates a network, and the very idea of networked organisational forms, points to different conceptions of political space and scale. Whether seeking to use Just War theory to ground a limited right to humanitarian intervention, with, notably, long-term obligations to rebuild a functioning and hopefully liberal state;<sup>71</sup> or to justify pursuit by the world's leading power of military action against terrorists and states that abet them, the issue of scale arises.<sup>72</sup>

### Just War and meeting the challenge of territory and space

It is therefore apparent that Just War theory faces a challenge from humanitarian intervention and the 'war on terror' that is not just about the ability of familiar principles and categories to deal with 'new' types of violence. The political and ethical scale and geographical perspective of Just War theory demands attention, too. This

<sup>67</sup> Elshtain, 'International Justice', p. 74.

<sup>68</sup> Williams with Roach, 'International Security', p. 2.

<sup>69</sup> George W. Bush, 'Address to a Joint Session of Congress and the American People', 20 September 2001, available at: <http://www.whitehouse.gov/news/releases/2001/09/20010920-8.html>.

<sup>70</sup> For example, Flint, 'Dynamic Metageographies', pp. 210–12.

<sup>71</sup> Wheeler, *Saving Strangers*; ICISS, *Responsibility to Protect*.

<sup>72</sup> Elshtain, *Just War Against Terror*.

section of the article aims to sketch out some elements of what this may involve, and to reiterate how it is that implicit, but powerful, assumptions about space, scale and territory can cause Just War theorists to underplay aspects of the contemporary challenges of political violence.

The state-centrism of the Just War tradition over the last two hundred years continues to cast a long shadow over debates about the uses of violence that appeal to the universal – humanitarianism – and the transnational – religious fundamentalist terrorism. The bordered, territorial political community claiming sovereignty offers a reassuring hearth around which we can regroup and reconsider how to respond ethically to these challenges. The problem, particularly in relation to transnational political projects and programmes, is that this response struggles to engage effectively with such challenges, inviting the rejection of Just War as being a tool of the powerful seeking to protect a geographical perspective that stems from and favours their power. A military response to terrorism, however, may be ethically correct, but the worry here is that the dice are loaded in favour of a military response on the grounds that the political programmes and projects of transnational scale do not receive the serious ethical consideration they deserve.

This is not to defend the violent, and especially terroristic, pursuit of such programmes. It is, though, to reiterate that by increasingly embedding the ideal-type of the liberal state at the heart of the *jus ad bellum* principles of legitimate authority, just cause and right intent in particular, the contemporary debate about Just War denies the ethical power that such projects *can* claim, and grants to states an ethical standing that the record of even the most liberal might struggle to live up to. This article has no trouble with the idea that some forms of state are ethically superior to others and that ethical relativism is inadequate, so is not arguing for such a standpoint. But the value that exists in non-state based forms of political identity and community; in ethical codes that do not take their frame of reference from a specific, territorialised perspective; and from notions of security, authority and obligation that exist at scales different from the state and the global is potentially denied by these contemporary developments in Just War thinking.

At its crudest, but this might serve as a simple illustration, we can see this in the distinction drawn within Islam, and particularly important to those who seek Islamic justification for *jihad* as holy war against non-believers, between the *dar al Islam* and *dar al harb*. The realm of Islam – of truth, justice and peace – and the realm of war which the true believer is duty bound to conquer, destroying those who do not convert, may be a deeply problematic reading of Islamic teaching, but it also highlights a radically different notion of political, and ethical, scale. The sense of injustice against Muslims being felt throughout the *umma* – the community of believers – is a powerful rhetorical tool, but also a notion of ethical scale that does not have a parallel in Western liberalism. The geographical dispersal of injustices across different places, or the seemingly distinctive political causes or manifestations of injustice that, to a liberal perspective, generate incoherence, may have commonality from the perspective of a different scale.

For liberals, one moves from the community of citizenship to the community of humanity and the idea of universal rights. Regional citizenships, institutionalised in the European Union, of course, do not (yet?) have ethical resonance, it seems. This article lacks the space, and its author the expertise, to develop these themes in further depth, but it does highlight one way in which our notions of ethical scale may not

track across to other ethical traditions. This does not have to result in a communitarian account, ruling out most, but not necessarily all, of the claims to ethical universality,<sup>73</sup> but it does help us recognise that there are different ethical scales, and thus a need for different political scales, too, from those that are the commonplaces of the Western ethical and political imagination. Political programmes that appeal to these different and distinctive ethical spaces and scales may not be incoherent, as they frequently appear, and they should not be dismissed without due consideration. That, of course, is not to deny the possibility of incoherence or ethical indefensibility. However, hard-wiring a notion of ordinary civic peace, for example, into a statist territorial political programme connected to sovereignty and an ethical scale that privileges the state, cannot be done without serious discussion of alternatives. Equally, our notion of Just War has to recognise the challenges here, too.

This perspective contrasts strongly with the ideas of authority and accountability that characterise the literature surveyed here. There is little room for weighing the ethical significance of, in this case, a territorially indistinct community such as the *umma*. Instead, a just war is required that emphasises the combination of might and right to be found in the liberal states of the world, and especially the United States, which possesses not only a position of military dominance but also a historical, cultural and political legacy of unique virtue. US exceptionalism is not just a trait in US political culture, it is a reflection of the ethical superiority of the United States.<sup>74</sup> This is not an ethical vision of a liberal global civil society, or a transnational network of humanitarian and human rights NGOs, but instead a coalition of willing liberal states, under the leadership of the USA, utilising international organisations where possible, by-passing them when necessary, in pursuit of a world where new allies are created via the implantation of just political arrangements and the defeat of ethically bankrupt challengers. It is not surprising that the label 'imperialism' has returned to prominence or that invocations of Just War can attract the kind of moral scepticism, if not cynicism, of the critique developed in political geography's engagements to date.

Addressing a lack of geographical imagination in its response to these key contemporary debates about the ethics of violence in international relations has implications for all three of the divisions of the just war tradition – *jus ad bellum*, *jus in bello* and *jus post bellum*. This article lacks the space to explore these in full, but hopefully certain instances may illustrate the potentially significant questions that arise and will flesh out to some extent how this criticism of Just War can lead to a positive engagement with the tradition that will ward off the moral sceptics by setting in train thinking that continues to build on the sophistication and insight that the first section of the article emphasised.

For the *jus ad bellum* the state as the site of legitimate authority and therefore the key declarer and prosecutor of war has been challenged, especially in discussions of humanitarian intervention, by the idea of the UN Security Council as a superior (in both legal and ethical senses of the word) authority. This, however, retains the statist

<sup>73</sup> For example, Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983); Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (London: University of Notre Dame Press, 1994).

<sup>74</sup> On exceptionalism in political culture, see for example Buzan, *The United States*, pp. 154–64; on US superiority see Elshtain, 'International Justice', pp. 64, 73; Elshtain, *Just War Against Terror*, pp. 168–73; Téson, 'Ending Tyranny', pp. 19–20.

basis of the legitimate authority principle and also limits the perspective of just cause to those instances where the Security Council can agree to utilise the elasticity in the UN Charter's idea of threats to international peace and security. Recognising the moral authority of non-state actors in this regard and the justice of causes which are inherently ill-suited to a statist framing or mediation becomes very difficult and Just War becomes allied to a conservative interpretation of international relations. The heavy indebtedness to international law as the pre-eminent institutionalisation of Just War is also reinforced by such moves. The alternative scales and differently territorialised conceptions of space in these programmes are ill-served by the established Just War discourse, and the developments in the theory over the last decade have done little to address this effectively.

This is despite the inherent notions of space and scale within *jus ad bellum* principles, such as proportionality, which asks us to consider the balance between the harm of the originating act of violence against the harm of the putative violent response. The geographical extent of that violence is part of this – a global 'war on terror', for instance, suggests a violent response could occur anywhere. However, the reality has been the corralling of an ostensibly 'global' scale within a state-based framework.<sup>75</sup> Equally, the spaces of violence have also remained largely conventional in terms of the ethical debate – the 'battlespace' has remained, conceptually, the 'battlefield' – a discrete and specific geographical location where those who are permissibly subject to violence congregate. Securing spaces where either political authority is complicit with terrorist networks or where authority is so weak as to be unable to prevent their operations is a commonplace in political debates about the war on terror.<sup>76</sup> A distinction is still drawn, though, between this and a 'battlefield' – the ethical location of legitimate large-scale violence.

Talk of the 'battlefield' raises the issue of the implications of this argument for the *jus in bello*. Here the categories of combatant and non-combatant have been challenged anew. Some have risked advocating a reopening of the debate within Just War whereby the innocence of non-combatants is connected to their not presenting a real or imminent threat of violence, as opposed to being innocent of any political commitment to support an unjust political project.<sup>77</sup> When that political project lies outside of the established, state-focused frameworks Just War is used to dealing with, then the problem is exacerbated. Can one be a 'combatant' in the name of a transnational political project that cannot be accommodated within the dominant contemporary geographical framework, and can one claim the authority of acting in the name of the leaders of such a project? Whilst this helps to highlight the long-standing problem in relation to terrorists as either combatants or non-combatants, and leaving aside the US government's designation of 'illegal combatants' in order to open some room for manoeuvre on this issue, the question of proportionality is at stake here, as well. Whilst the combatant/non-combatant distinction has grabbed most of the attention in the 'war on terror', and also in humanitarian intervention debates where the status of irregular paramilitary forces has been important, the issue of proportionality is also potentially controversial.

<sup>75</sup> Here the political geographers get it right. See Flint and Fallah, 'How the United States Justified Its War on Terrorism'.

<sup>76</sup> For example, Williams with Roach, 'International Security'.

<sup>77</sup> For example, Barry Buzan, 'Who May We Bomb?' in Ken Booth and Tim Dunne (eds), *Worlds in Collision: Terror and the Future of Global Order* (Basingstoke: Palgrave, 2002).

The global 'war on terror', for example, places at the centre of the challenge the idea of transnational terrorist networks, loosely affiliated to one another and based on local cells, operating across borders and with little connection to established, territorialised political authority. However, do our ethical concerns about the proportionality of violence reflect this, or, if not, how does this contribute to the debate about military operations? When judging the proportionality of violence, do we judge against the damage inflicted against 'global terrorism', if such a label has utility, or do we judge it against the local cell and the environment in which they are operating? Given the looseness of the affiliations and the absence of centralised command and control characteristic of networked terrorism where, for example, al Qaeda is likened to a brand rather than any sort of centralised structure, can attacks in one place be justified in terms of proportionality by reference to damaging affiliated elements of the network elsewhere?

Finally, the *jus post bellum* standard that emerges from the literature on humanitarian intervention and the war on terror seems focused on creating functioning states. Ideally these are liberal and democratic in character, able to establish, protect and embed social, political and economic structures that will secure the new state in the short-term and, looking further ahead, bring about the kind of civic peace Elshtain advocates. This foundation will also help create economic prosperity to address the social exclusion and disillusionment that are often portrayed as deep-rooted explanations for the attractions of violence.<sup>78</sup> Irrespective of the empirical accuracy of these claims, this is, by any standards, a Herculean political task. It also represents an ethical prescription out of kilter with the Just War tradition's far more limited practice of addressing the immediate causes of war. Of course, the advocates of a more ethically ambitious and transformative Just War are able to appeal to classical authority for their ideas – the idea of a Just War being one that will ensure there is no need to repeat the exercise, and thus the need to get to the root causes. However, the record in Bosnia, Somalia, Kosovo, Afghanistan and Iraq so far gives serious pause for thought about the viability of such an approach, practically and ethically.

More extensively, this article has raised questions about the viability of a statist strategy for addressing the challenge of *jus post bellum*. As we have seen, ethics, identity and security are being addressed at different scales and in different spaces, and these, too, need to be part of the mix of debate about an ethical response to post-conflict societies and how to effectively address terrorism. Just War thinking has yet to pick up on this in a systematic fashion and explore in depth and with sustained attention the opportunity for different spaces and scales to play a positive role in how we think and act ethically in response to the aftermath of armed conflict. In the search for answers to how and when to act, the need to remember the idea of a tradition of enquiry, identifying which questions to ask and how to ask them, is in danger of being lost as we search for rules to apply, clear principles to uphold and laws that justify specific responses. Drawing on the richness of the tradition of Just War thinking to ask questions, think reflectively and critically and to seize new challenges, such as the impacts of these alternative political spaces, scales and

<sup>78</sup> For a critical assessment of this link see, for example, Alan B. Kreuger and Jitka Malečková, 'Education, Poverty and Terrorism: Is There a Causal Connection?' *Journal of Economic Perspectives*, 17:4 (2003).



territorialisations is just as important an aspect and the questions this section of the article has tried to ask may hopefully go a small way towards reinforcing this imperative.

## Conclusion

The longevity, flexibility and sophistication of the Just War tradition is imposing and its centrality to contemporary debates about humanitarian intervention and the 'war on terror' unsurprising as a result. However, the question of the political spaces that the principal contemporary liberal manifestation of the Just War tradition envisages as the location of ethical debate and behaviour, and the political scale at which it operates, are potentially problematic. Humanitarian crises and transnational terrorism pose important questions in both these regards and, so far, Just War thinking has responded principally by reasserting the centrality and value of established, traditional frameworks. The state retains its central position in all three arenas of contemporary Just War thinking and this is hampering its ability to respond, not in terms of ethical critique of human rights abuses and terrorist attacks – these are goals into which Just War theorists have found it easy to hit balls – but in terms of accommodating, even recognising, the potential ethical import of non-state based frames of political reference, claims to political authority and scales of political activity. A more dynamic approach to these topics in other parts of international relations is not being followed through in Just War theory to the necessary extent.

A comprehensive analysis of what this might mean in terms of exploiting Just War's famed flexibility to meet this challenge better is a long-term project a single article cannot hope to attempt. However, I have tried to sketch some sort of agenda, or at least a set of provisional starting points in *jus ad bellum*, *jus in bello* and *jus post bellum* terms. If nothing else these have hopefully served to highlight that this is a significant challenge and that if we are to use Just War theory, as we should, in debating, exploring and framing ethical thought about some of the most important political challenges we face today, there needs to be movement in this direction. Territory, borders and ethics have received fairly limited consideration in the past, especially in international relations, but that position, it is argued here, is under challenge.<sup>79</sup> Just War theory has made some adjustments to address the changing ethics of violence of the last fifteen years, but now it needs to recognise the significance of the diversification that our political spaces and scales are undergoing. Our political ethics, including the ethics of war, are under renewed pressure and in need of renewed innovation. The next chapter in the long history of Just War theory must include sustained consideration of ethics, space and scale.<sup>80</sup>

<sup>79</sup> This is discussed at length in Williams, *Ethics and Territorial Borders*.

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